

progress unacceptable, HUD will notify the PHA (or DF-RMC or RMC) that it will take such actions as it may determine appropriate in accordance with the provisions of the 1937 Act and other statutes, the ACC, this part, and other HUD regulations, including, but not limited to, the remedies available for substantial default.

**§ 902.75 Troubled performers.**

(a) *General.* Upon a PHA's designation as a troubled performer, in accordance with the requirements of section 6(j)(2)(B) of the Act (42 U.S.C. 1437d(j)(2)(B)) and in accordance with this part, HUD must notify the PHA and shall refer each troubled performer PHA to the PHA's field office, or other designated office(s) at HUD, for remedial action, oversight, and monitoring. The actions to be taken by HUD and the PHA will include statutorily required actions, and such other actions as may be determined appropriate by HUD.

(b) *Memorandum of agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer, HUD will initiate activities to negotiate and develop an MOA. An MOA is required for a troubled performer. The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA. It shall include, but not be limited to:

(1) Baseline data, which should be data without adjustments or weighting but may be the PHA's score in each of the PHAS indicators or subindicators identified as a deficiency;

(2) Performance targets for such periods specified by HUD (*e.g.*, annual, semiannual, quarterly, monthly), which may be the attainment of a higher score within an indicator or subindicator that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA, including the identification of the party responsible for the completion of each task and for reporting progress;

(4) Technical assistance to the PHA provided or facilitated by HUD; for example, the training of PHA employees

in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of a troubled performer designation or troubled with respect to the program for assistance from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) and HUD recognition for the most-improved PHAs;

(7) The consequences of failing to meet the targets, which include, but are not limited to, the interventions stated in 24 CFR part 907 and in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3)); and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas, and authority to make preliminary commitments of support, financial or otherwise.

(c) *PHA review of MOA.* The PHA will have 10 days to review the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the MOA with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the draft MOA.

(d) *Maximum recovery period.* (1) *Expiration of the first-year improvement period.* Upon the expiration of the one-year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 12 months after the initial notice of the troubled

performer designation, improve its performance by at least 50 percent of the difference between the initial PHAS assessment score that led to the troubled performer status and the score necessary to remove the PHA's designation as a troubled performer.

(2) *Expiration of 2-year recovery period.* Upon the expiration of the 2-year period that started on the date on which the PHA received the initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation, improve its performance and achieve an overall PHAS score of at least 60 percent of the total points available.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court-ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court-ordered receivership agreement, if applicable), or other AME-designated Chief Executive Officer; and

(3) The field office

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled performer PHA fails or refuses to execute an MOA within the period provided in paragraph (c) of this section, or a troubled performer PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by HUD, the field office shall refer the PHA to the Assistant Secretary to determine such remedial actions, consistent with the provisions of the ACC and other HUD regulations, including, but not limited to, remedies available for substantial default.

(2) For purposes of paragraph (g) of this section, substantial improvement is defined as the improvement required by paragraph (d) of this section. The

maximum period of time for remaining in troubled performer status before being referred to the Assistant Secretary is 2 years after the initial notification of the troubled performer designation. Therefore, the PHA must make substantial improvement in each year of this 2-year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

*Example:* A PHA receives a score of 50 points on the physical condition, management operations, or financial condition PHAS indicators; 60 points is a passing score. Upon the expiration of the one-year period that started on the date on which the PHA received the initial notification of the troubled performer designation, the PHA must achieve at least 55 points (50 percent of the 10 points necessary to achieve a passing score of 60 points) to continue recovery efforts. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If, in the first year that started on the date on which the PHA received the initial notification of the troubled designation, the PHA fails to achieve the 5-point increase, or if the PHA achieves the 5 point increase within the first year that started on the date on which the PHA received the initial notification of the troubled designation, but fails to achieve the minimum passing score of 60 points after the second year after the initial notification, HUD will notify the PHA that it will take such actions as it may determine appropriate in accordance with the provisions of the ACC and other HUD regulations, including, but not limited to, the remedies available for substantial default.

(h) *Audit review.* For a PHA designated as a troubled performer, HUD may perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA; and HUD may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is in a troubled performer status, all services to residents will continue uninterrupted.